

FILED

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In The  
**Supreme Court of the United States**

October Term, 1995  
STATE OF ARKANSAS,

*Petitioner,*

vs.

FARM CREDIT SERVICES OF CENTRAL ARKANSAS,  
PCA; FARM CREDIT SERVICES OF WESTERN  
ARKANSAS, PCA; EASTERN ARKANSAS  
PRODUCTION CREDIT ASSOCIATION; and DELTA  
PRODUCTION CREDIT ASSOCIATION,

*Respondents.*

*On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Eighth Circuit*

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**RESPONDENTS' BRIEF IN OPPOSITION**

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RUFUS E. WOLFF  
*Counsel of Record*  
NICHOLS, WOLFF, LEDBETTER  
& CAMPBELL, P.A.  
1014 West Third  
Little Rock, Arkansas 72201  
(501) 372-5659

RICHARD A. HANSON  
McDERMOTT, WILL & EMERY  
227 West Monroe Street  
Chicago, Illinois 60606-5096  
(312) 984-7799

*Attorneys for Respondents*

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Respondents, Farm Credit Services of Central Arkansas, PCA, Farm Credit Services of Western Arkansas, PCA, Eastern Arkansas Production Credit Association, and Delta Production Credit Association, respectfully request that this Court deny the Petition for Writ of Certiorari submitted by Petitioner, the State of Arkansas.

### **STATEMENT OF THE CASE**

Respondents are four production credit associations which brought suit in the United States District Court for the Western Division of Arkansas, seeking a declaratory judgment that production credit associations are exempt from Arkansas sales and income taxation and for an injunction against Petitioner's imposition of such taxes. On March 6, 1995, the District Court granted summary judgment for Respondents. The District Court held that there are no genuine issues of material fact, that the production credit associations are federal instrumentalities, and that Congress has not expressly waived their immunity from state income and sales taxation.

Petitioner appealed to the United States Court of Appeals for the Eighth Circuit. The Court of Appeals affirmed the District Court's decision on February 23, 1996, holding that the production credit associations are federal instrumentalities immune from state income and sales taxation because Congress has made no express waiver of their tax immunity.

## REASONS FOR DENYING THE WRIT

### I.

#### THE EIGHTH CIRCUIT DECISION DOES NOT CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The Petition for Writ of Certiorari asserts that this Court should review the decision of the Eighth Circuit Court of Appeals because of an alleged conflict with decisions of this Court. (Petition at 4). The Petition should be denied because the decision of the Eighth Circuit Court of Appeals does not conflict with any decision of this Court. The decision applies established principles regarding the taxation of federal instrumentalities.

The Eighth Circuit opinion first concludes that the Respondents are federal instrumentalities. The opinion then states that a federal instrumentality is subject to state income and sales taxes only if Congress has expressly waived the federal instrumentality's immunity from such taxes. Finally, the opinion reviews the Farm Credit Act and concludes that Congress has not expressly waived Respondents' immunity from state income and sales taxes. Each of these conclusions is fully consistent with prior decisions of this Court.

In concluding that Respondents are federal instrumentalities, the Court of Appeals stated:

Production Credit Associations are expressly termed "federal instrumentalities" in relevant statutes and case law.

76 F.3d 961, 962 (8th Cir. 1996) (footnotes omitted) (Petitioner's Appendix at A-2). In response to the argument that Respondents

engage in proprietary activities, the Court of Appeals stated that the activities of a federal instrumentality are, as a matter of law, governmental, not proprietary. This statement is consistent with and is based upon this Court's decisions in *Federal Land Bank of Wichita v. Board of County Commissioners*, 368 U.S. 146 (1961) and *Federal Land Bank v. Bismarck Lumber Co.*, 314 U.S. 95 (1941). In *Federal Land Bank of Wichita*, this Court stated:

If the enabling Act is constitutional and if the instrumentality's activity is within the authority granted by the Act, a governmental function is being performed.

368 U.S. at 150-51. Petitioner has neither challenged the constitutionality of the Farm Credit Act nor claimed that Respondents' activities were outside the authority granted them. In finding that Respondents are federal instrumentalities and in holding that they are engaged in performing a governmental function, the Court of Appeals relied upon the express terms of the Farm Credit Act and followed this Court's prior decisions regarding the federal instrumentality status of member institutions of the Farm Credit System.

Having found that Respondents are federal instrumentalities, the Court of Appeals held that Respondents are exempt from state income and sales taxation unless Congress has expressly waived their exemption. This holding is based upon this Court's decision in *Department of Employment v. United States*, 385 U.S. 350 (1966), which held that in order to subject a federal instrumentality to state taxation, Congress must enact a clear waiver of its tax exemption.

The Court of Appeals opinion is also consistent with this Court's decision in *United States v. Alleghany County*, 322 U.S. 174 (1944). In that case, Justice Jackson observed:

... but unshaken, rarely questioned, and indeed not questioned in this case, is the principal that possessions, institutions and activities of the Federal Government itself in the absence of express congressional consent, are not subject to any form of state taxation.

322 U.S. at 177.<sup>1</sup> Thus, the Court of Appeals' conclusion that Respondents are exempt from state taxation absent an express congressional waiver of their state tax immunity is fully consistent with prior decisions of this Court and other Circuit Courts of Appeals which have considered this question.

To determine whether Congress had expressly waived Respondents' immunity from state income and sales taxation, the Court of Appeals canvassed the Farm Credit Act, with particular attention to 12 U.S.C. § 2077. The court concluded that nothing in any statute, including 12 U.S.C. § 2077, indicates any intent on the part of Congress to waive Respondents' tax immunity. Consequently, the court concluded that Respondents are immune from Arkansas income and sales taxation.

Petitioner claims that the Court of Appeals refused to construe 12 U.S.C. § 2077. (Petition at 9). A more accurate statement is that the Court of Appeals refused to accept Petitioner's construction of the statute. Petitioner argued that by deleting the previous express waiver of immunity from state income and sales taxation, Congress impliedly waived

1. In addition to the Eighth Circuit Court of Appeals decisions cited in the Court of Appeals' decision, the Courts of Appeals for the First and Sixth Circuits have also held that federal instrumentalities are immune from state taxation absent a specific congressional waiver of immunity. *United States v. State Tax Commission*, 481 F.2d 963, 969 (1st Cir. 1973), and *United States v. State of Michigan*, 851 F.2d 803, 805 (6th Cir. 1988).

Respondents' immunity from tax. The court's rejection of this argument applies the settled rule that any waiver of the tax immunity of federal instrumentalities must be express, not implied.

In sum, Petitioner's claim that the decision below conflicts with the applicable decisions of this Court simply cannot withstand examination. The Court of Appeals applied established principles to conclude that Respondents are federal instrumentalities and that there has been no express waiver of their tax immunity. The court's analysis and decision is fully consistent with, and not in conflict with, this Court's prior decisions regarding the taxation of federal instrumentalities.

## CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari filed by the State of Arkansas should be denied.

Respectfully submitted,

RUFUS E. WOLFF  
Counsel of Record  
NICHOLS, WOLFF, LEDBETTER  
& CAMPBELL, P.A.  
1014 W. Third  
Little Rock, Arkansas 72201  
(501) 372-5659

RICHARD A. HANSON  
McDERMOTT, WILL & EMERY  
227 W. Monroe Street  
Chicago, Illinois 60606-5096  
(312) 984-7799

Attorneys for Respondents